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No. 83-640

In the Supreme Court of the United States

OCTOBER TERM, 1983

THE STATE OF TEXAS, APPELLANT

v.

KVUE-TV, INC., ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether a state statute that regulates the rates that broadcast stations within the state may charge for political advertising is preempted by the Communications Act of 1934, 47 U.S.C. 151 *et seq.*

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This brief is submitted in response to the Court's invitation to the Solicitor General to express the views of the United States.

STATEMENT

1. In the Communications Act of 1934, 47 U.S.C. 151 *et seq.*, Congress exercised its authority over interstate commerce by establishing a system of broadcast regulation. Congress concluded that some form of government control was necessary; otherwise, it was thought, "the [broadcast] medium would be of little use because of the cacaphony of competing voices, none of which could be clearly and predictably heard." *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 376 (1969). See *National Broadcasting Co.* v. *United States*, 319 U.S. 190, 210-213 (1943). Accordingly, Congress created the Federal Communications Commission and prohibited the use of radio frequencies except

under license issued by the Commission (47 U.S.C. 301). The Communications Act specifically recognizes, however, that "broadcasters are not common carriers and are not to be dealt with as such." *FCC* v. *Sanders Brothers Radio Station*, 309 U.S. 470, 474 (1940) (citing 47 U.S.C. 153(h)). Instead, under the statutory scheme, "the field of broadcasting is one of free competition" and does not involve "the regulation of rates and charges," which is unnecessary where "free competition is to be permitted." *FCC* v. *Sanders Brothers Radio Station*, 309 U.S. at 474-475.

Since 1952, Congress has maintained a narrow exception to the policy against regulation of broadcast advertising rates. As originally adopted, the exception prohibited broadcasters from charging political candidates, whether for federal, state or local office,[1] higher rates than they charge other advertisers "for comparable use of such station."[2] "This 'comparable use' provision was designed to protect candidates from discriminatory rates." *Hernstadt* v. *FCC*, 677 F.2d 893, 895 (D.C. Cir. 1980) (footnote omitted). In its present form, the exception continues to apply the "comparable use" requirement at all times other than

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[1]In subsequent enactments, Congress has continued to apply its legislation regulating the rates broadcasters may charge for candidate advertising "to all legally qualified candidates for public office, and not merely Federal candidates" (J.S. App. A29-A30, quoting *In re Public Notice Concerning Licensee Responsibility Under Amendments to the Communications Act Made by the Federal Election Campaign Act of 1971*, 47 F.C.C. 2d 516, 518 (1974) (court's emphasis deleted)). However, when Congress granted a new, affirmative right of access to broadcast air time for individual candidates, it limited this right to "legally qualified candidate[s] for Federal elective office." 47 U.S.C. 312(a)(7); see *CBS, Inc.* v. *FCC*, 453 U.S. 367, 378-379 (1981); *Hernstadt* v. *FCC*, 677 F.2d 893, 903, 904-905 n.29 (D.C. Cir. 1980).

[2]Communications Act Amendments of 1952, ch. 879, § 11, 66 Stat. 717 (amending Section 315 of the Communications Act of 1934).

the period immediately prior to a primary or a general election. 47 U.S.C. 315(b)(2). During this period, which the statute defines as "forty-five days" before a primary election and "sixty days [before] a general or special election," broadcasters who sell time to political candidates must not charge more than "the lowest unit charge of the station for the same class and amount of time for the same period." 47 U.S.C. 315(b)(1).[3]

2. The present case involves a challenge to a statute enacted by the State of Texas in an effort to impose its own regulatory regime with respect to the rates broadcast stations may charge for "political advertising" (J.S. App. F1-F3). Whereas Congress has required broadcasters to offer "lowest unit charge" rates only during the 45 or 60 day period immediately prior to a primary or general election, the Texas statute requires radio and television stations located within the State to offer "lowest unit charge" rates for political advertising at all times (J.S. App. A33, F2). Moreover, although Congress has sought to regulate broadcast advertising rates only when political candidates or their campaign committees purchase broadcast time for the candidate's use,[4] the Texas statute seeks to regulate the rates for all "political advertising," as broadly defined to include

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[3]The difference between "comparable use" and "lowest unit charge" is illustrated by the following example. A candidate desires to buy time on a station that offers a volume discount for the purchase of many advertisements, but the candidate wishes to purchase only a single spot announcement. Under "comparable use" rates, the candidate would be entitled to a volume discount only when he or she purchased in bulk, but under "lowest unit charge" rates, the candidate receives the benefit of the volume discount offered a bulk purchaser even though the candidate is not buying in bulk. See *Hernstadt* v. *FCC*, 677 F.2d at 895, 898, 900; *In re Request by Station WBGR*, 58 F.C.C. 2d 980 (1976). See also J.S. App. A31.

[4]J.S. App. A32 (citing *Use of Broadcast and Cablecast Facilities by Candidates for Public Office*, 34 F.C.C. 2d 510, 529 (1972)).

broadcasts not only by candidates, but also by the supporters or opponents of a political office holder or candidate, as well as broadcasts favoring or opposing "any measure submitted to a vote of the people" (J.S. App. F1; see *id.* at A33).

3. Appellee KVUE-TV, Inc., a television station licensed to Austin, Texas, filed suit for declaratory relief in the United States District Court for the Western District of Texas challenging the constitutionality of the Texas statute on the ground, inter alia, that it violates the Supremacy Clause insofar as it seeks to prescribe the rates radio and television stations may charge political advertisers.[5] The district court dismissed the challenge to Texas' rate regulation of political advertising on grounds of lack of standing and abstention (J.S. App. C1-C21).

The court of appeals reversed (J.S. App. A1-A35). The court first held that appellee had been injured by the statute and thus had standing to challenge it (*id.* at A12-A20). The court also concluded that abstention was inappropriate here because it viewed the question as "whether, regardless which construction of the statute the state may adopt, the federal statute and regulations prevent Texas from legislating in this field" (*id.* at A22).

On the merits, the court of appeals held that Texas' attempt to regulate broadcaster rates for political advertising is preempted "because it conflicts directly with federal law" (J.S. App. A10). Specifically, the court observed (*id.* at A33) that the State's imposition of the lowest unit charge

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[5]Appellee also challenged the constitutionality of another provision of the Texas statute that requires sponsors of political advertising to identify themselves. The court of appeals held this provision invalid with respect to federal candidates or committees, but upheld Texas' authority to apply its sponsorship identification requirement to advertisements concerning state elections and campaigns (J.S. App. A28). These rulings are not challenged here.

rate on "all political advertising" over broadcast stations and not simply on broadcasts by candidates, as well as its requirement that this rate be charged at all times and not only in the 45 or 60 day period before a primary or general election, places a "considerably heavier burden on broadcasters" that choose to make time available to political advertisers than does Section 315(b) of the Communications Act, 47 U.S.C. 315(b).[6] To the extent that broadcasters might seek to avoid this burden by decreasing the amount of advertising time they would otherwise be prepared to sell for political advertising, this would "directly thwart Congress' intent in passing § 315(b)(1) to give candidates greater * * * access to the broadcast media" (J.S. App. A33-A34 & n.65). For these and other reasons, the court held that the State's rate regulation statute was "an obstacle to the achievement of Congress' purpose[s] in enacting [its] rate regulation statute" and thus the Texas statute was invalid under the Supremacy Clause (J.S. App. A33; see *id.* at A22 & n.24).

DISCUSSION

The question presented in this case is whether Article 14.09(B) of the Texas Election Code (*reprinted in* J.S. App. F1-F3), which regulates the rates that broadcasters within the State may charge for political advertising, is preempted by federal law. In *Silkwood* v. *Kerr-McGee Corp.*, No. 81-2159 (Jan. 11, 1984), slip op. 9 (citations omitted), this Court recently observed that

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[6]The court of appeals noted that one of the reasons Congress selected the lowest unit rate "was to avoid the possibly devastating economic impact on small stations of a fixed discount for political advertising" (J.S. App. A33 n.64). In the court's view, the Texas statute at issue "certainly conflicts with this purpose because it imposes a year-round discount instead of the limited discount Congress enacted" (*ibid.*).

> state law can be preempted in either of two general ways. If Congress evidences an intent to occupy a given field, any state law falling within that field is preempted. * * * If Congress has not entirely displaced state regulation over the matter in question, state law is still preempted to the extent it actually conflicts with federal law, that is, when it is impossible to comply with both state and federal law, * * * or where the state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress * * *.

See *Pacific Gas & Electric Co.* v. *State Energy Resources Commission*, No. 81-1945 (Apr. 20, 1983), slip op. 11; *Fidelity Federal Savings & Loan Association* v. *de la Cuesta*, 458 U.S. 141, 153 (1982). The Texas statute at issue here seeks to regulate the rates that federally licensed broadcast stations may charge for certain types of advertising. We submit that the statute is preempted because it frustrates the achievement of Congress' purposes with respect to the broadcast regulatory scheme in general, and Section 315 of the Communications Act (47 U.S.C. 315) in particular.

1. The Court on numerous occasions has discussed the history of broadcast regulation. See, *e.g.*, *Columbia Broadcasting System, Inc.* v. *Democratic National Committee*, 412 U.S. 94, 103-114 (1973) (hereinafter *CBS, Inc.* v. *DNC*). Although Congress found it necessary to subject broadcasting to federal regulation to avoid having the medium degenerate to the point where there was only a "cacaphony of competing voices, none of which could be clearly and predictably heard" (*Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. at 376), Congress emphatically rejected proposals that would have subjected broadcasters' advertising rates to regulation. See *CBS, Inc.* v. *DNC*, 412 U.S. at 105-109.

The legislative history of the Radio Act of 1927, ch. 169, 44 Stat. 1162 *et seq.*, shows that the Senate Committee bill contained the following provision:

> If any licensee shall permit a broadcasting station to be used * * * by a candidate or candidates for any public office, *or for the discussion of any question affecting the public,* he shall make no discrimination as to the use of such broadcasting station, *and with respect to said matters the licensee shall be deemed a common carrier in interstate commerce.* * * *

67 Cong. Rec. 12503 (1926) (emphasis added). When the bill came to the Senate floor, Senator Dill, the principal architect of the Radio Act of 1927, offered an amendment to eliminate both the common carrier obligation and the requirement of nondiscrimination with respect to the discussion of public issues.[7] See *CBS, Inc.* v. *DNC,* 412 U.S. at 106.[8] Several Senators objected to the Dill amendment, claiming that, unless rates were regulated, only the wealthy would be able to utilize radio,[9] and that, unless the

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[7]The nondiscrimination requirement in the Committee bill would have applied to rates as well as to access. See 67 Cong. Rec. 12504 (Sen. Heflin).

[8]The pertinent provision of Senator Dill's proposed amendment read as follows (67 Cong. Rec. 12502):

> If any licensee shall permit a broadcasting station to be used by a candidate or candidates for any public office, he shall afford equal opportunities to all candidates for such public office in the use of such broadcasting station: *Provided,* That such licensee shall have no power to censor the material broadcast under the provisions of this paragraph and shall not be liable to criminal or civil action by reason of any uncensored utterances thus broadcast.

A separate provision of Senator Dill's proposed amendment would have prohibited discrimination by broadcasters in advertising rates with respect to all advertising, political and nonpolitical 67 Cong. Rec. 12501-12502. This provision was not enacted.

[9]Senator Heflin stated (67 Cong. Rec. 12504):

> It is very necessary that somebody should control the charge. If we do not provide that some one shall have authority to say to some extent how much shall be charged, only the rich can afford to use the radio. The fees can be fixed so high that the poor man will not be able to use it.

nondiscrimination requirement also covered public questions, a great potential would exist for the monopolistic domination of information on issues of public importance.[10] Despite these objections, the Senate adopted

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[10]Thus, Senator Howell argued (67 Cong. Rec. 12504):

> We are not trying merely to place the privilege of broadcasting within the reach of all so far as cost is concerned, but we want to place it within the reach of all for the discussion of public questions when one side or the other is allowed to be presented.
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> • • • • •
>
> Mr. President, if all candidates can not be heard, none should be heard. If both sides of a question can not be heard over a particular radio station, none should be heard. I can not emphasize this too strongly. It is a matter of tremendous importance, because every day radio is reaching more and more homes, and there are great interests in this country—for instance, the General Electric Co., which can thus enter nearly every equipped home in the United States with their radio stations. They have them hooked up so that one station receives what another sends out. Moreover, the General Electric Co. and the Radio Corporation of America have been afforded the most powerful stations in the United States. • • • Are we going to allow these great interests to utilize their stations to disseminate the kind of publicity only of which they approve and leave no opportunity for the other side of public questions to reach the same audience?
>
> The Senator from Washington has left in the bill a provision respecting candidates. It is important, but it has not anything like the importance of the provision he has stricken out—the discussion of public questions.

Senator Dill responded to this concern by stating (67 Cong. Rec. 12504):

> [Public questions] is such a general term that there is probably no question of any interest whatsoever that could be discussed but that the other side of it could demand time; and thus a radio station would be placed in the position that the Senator from Iowa mentions about candidates, namely, that they would have to give all their time to that kind of discussion, or no public question could be discussed.

See *CBS, Inc.* v. *DNC*, 412 U.S. at 106-107.

Senator Dill's amendment. See *CBS, Inc.* v. *DNC*, 412 U.S. at 107.

"The provision finally enacted, § 18 of the Radio Act of 1927, 44 Stat. 1170, was later re-enacted as § 315(a) of the Communications Act of 1934, but only after Congress rejected another proposal that would have imposed a limited obligation on broadcasters to turn over their microphones to persons wishing to speak out on certain public issues." *CBS, Inc.* v. *DNC*, 412 U.S. at 107-108 (footnotes omitted). In 1934, Congress also rejected a proposal that would have limited the rates that could be charged for advertising by a candidate, by a supporter of a candidate, or by a proponent of one side of a public question. See *id.* at 108 n.4.[11] "Instead, Congress after prolonged consideration

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[11]Section 315 of the Senate bill (S.2910, 73d Cong., 2d Sess. (1934)) stated that:

> (a) • • • [I]f any licensee shall permit any person to use a broadcasting station in support of or in opposition to any candidate for public office, *or in the presentation of views on a public question to be voted upon at an election, he shall afford equal opportunity to an equal number of other persons to use such station* in support of an opposing candidate for such public office, or to reply to a person who has used such broadcasting station in support of or in opposition to a candidate, *or for the presentation of opposite views on such public questions.*
>
> • • • • •
>
> (c) *The rates charged for the use of any station for any of the purposes set forth in this section shall not exceed the regular rates charged for the use of said station to advertisers furnishing regular programs,* and shall not be discriminatory as between persons using the station for such purposes.

See *Hearings on S. 2910 Before the Senate Comm. on Interstate Commerce*, 73d Cong., 2d Sess. 19 (1934) (emphasis added). The Senate Report explained:

> This section extends the requirement of equality of treatment of political candidates to supporters and opponents of candidates, and public questions before the people for a vote. It also prohibits any increased charge for political speeches. No station owner is

adopted § 3(h), which specifically provides that 'a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.' " *CBS, Inc.* v. *DNC,* 412 U.S. at 108-109 (footnote omitted).

This history shows that in 1927, and again in 1934, Congress considered, but did not adopt, provisions that would have required broadcasters to act as common carriers vis-a-vis candidates and public questions. Instead, it specifically provided only that an equal opportunity was to be granted to candidates once their opponents had been permitted to use a facility. Nor did Congress choose in either case to regulate the rates that could be charged for candidate advertising. In short, Congress was careful not to grant "the Commission powers of control over the rates" broadcasters could charge advertisers, in sharp contrast "to communication by telephone and telegraph, which the Communications Act recognizes as a common carrier activity" subject to federal "regulation of rates and charges." *FCC* v. *Sanders Brothers Radio Station,* 309 U.S. at 474, 476.

Congress, of course, can create exceptions to its policy which makes "the field of broadcasting * * * one of free competition." *FCC* v. *Sanders Brothers Radio Station,* 309 U.S. at 474. It has done that in the case of the rates that stations may charge political candidates and their campaign committees for broadcasts by the candidate. 47 U.S.C. 315(b). See J.S. App. A25-A26, A32 & n.63. But, absent

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required to permit the use of his station for any of these purposes but *if a station permits* one candidate or *the supporters or opponents* of a candidate, or *of a public question upon which the people are to vote, to use its facilities, then there is the requirement of equality of treatment and that no higher rates than ordinary advertising rates shall be charged.*

S. Rep. 781, 73d Cong., 2d Sess. 8 (1934) (emphasis added). The Senate provision was deleted in Conference. See H.R. Conf. Rep. 1918, 73d Cong., 2d Sess. 26, 49 (1934).

congressional authorization, neither the Commission nor any state may create further exceptions to the deliberately adopted federal statutory policy against regulation of broadcast advertising rates. Because Texas seeks to regulate these rates in a manner not authorized by Congress, its statute is invalid under the Supremacy Clause.[12]

2. The Texas statute also conflicts with Congress's particular purposes in enacting Section 315 of the Communications Act, 47 U.S.C. 315. Section 315 is an important part of "the congressional plan to develop broadcasting as a political outlet." *Farmers Educational & Cooperative Union* v. *WDAY, Inc.*, 360 U.S. 525, 535 (1959). Congress has long been aware of "radio's potential importance as a medium of communication of political ideas [and] sought to foster its broadest possible utilization" to that end. *Id.* at 529. As both the court of appeals and the Commission recognized, Congress intended the "lowest unit charge" provision of Section 315(b)(1) to facilitate access by political candidates "to the broadcast media to explain their stand on issues" (J.S. App. A31 (footnote omitted)). At the same time, however, Congress sought to ensure that any attempt to "lower the rates charged candidates" should avoid "imposing unreasonable and possibly economically devastating burdens on small stations." *Hernstadt* v. *FCC*, 677 F.2d at

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[12]In *Head* v. *New Mexico Board of Examiners*, 374 U.S. 424 (1963), the Court declined to hold that all regulation of broadcast advertising had been preempted, and it accordingly upheld a state statute that prohibited advertisements by optometrists in newspapers and on broadcast stations from quoting the price charged for optometric services. Unlike this case, *Head* did not involve an attempt by a state to regulate the rates that broadcast stations may charge their advertisers, and the Court, in upholding the statute, observed that there was no showing that the state law would " 'frustrate any part of the purpose of the federal legislation.' " 374 U.S. at 432 (quoting *Colorado Anti-Discrimination Commission* v. *Continental Air Lines, Inc.*, 372 U.S. 714, 724 (1963)).

898; see *id.* at 898 n.15 (citing S. Rep. 92-96, 92d Cong., 1st Sess. 27 (1971)); *Federal Election Campaign Act of 1971: Hearings on S. 1, et al., Before the Subcomm. on Communications of the Senate Comm. on Commerce*, 92d Cong., 1st Sess. 412 (1971) (Sen. Pastore). See also J.S. App. A33 & n.64.

To facilitate candidate access to broadcast stations, without either causing undue financial hardship to licensees or discouraging them from offering to sell time for political discussion,[13] Congress has "carefully circumscribed" the federal requirement for charging "lowest unit charge" rates (J.S. App. A32). First, these rates are required only during the period immediately preceding a primary or general election, which Congress has specifically defined as 45 days before a primary and 60 days before a general election. 47 U.S.C. 315(b)(1).[14] Second, Congress has refrained from

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[13]Licensees are required to sell time in the first instance only to candidates for federal office. 47 U.S.C. 312(a)(7); *CBS, Inc.* v. *FCC*, 453 U.S. at 378-379. Although broadcasters are not required in other circumstances to sell advertising time to individuals or groups wishing to engage in political discussion (*CBS, Inc.* v. *DNC*, 412 U.S. at 94), a licensee may exercise its broad editorial discretion and allow political advertising as one means of "afford[ing a] reasonable opportunity for the discussion of conflicting views on issues of public importance." 47 U.S.C. 315(a); see *Democratic National Committee* v. *FCC*, 717 F.2d 1471, 1473 (D.C. Cir. 1983).

[14]The "lowest unit charge" provision in Section 315(b)(1) was initially included in the Senate bill, and was adopted in conference as part of a compromise between the House and Senate conferees. See H.R. Conf. Rep. 92-752, 92d Cong., 1st Sess. 22 (1971). Several Members of the House objected to the the "lowest unit charge" provision on the ground that it discriminated against the broadcast media. See 118 Cong. Rec. 324 (1972) (Rep. Heinz); *id.* at 325 (Rep. Devine); *id.* at 326 (Rep. Nelsen); *ibid.* (Rep. Keith); *id.* at 327 (Rep. Broyhill); *id.* at 327-328 (Rep. Thompson); *id.* at 330 (Rep. Pickle); *id.* at 332 (Rep. Hillis). In urging passage of the legislation, its supporters emphasized that inclusion of the provision was the product of compromise and that the "lowest unit charge" rate would apply only to the 45-day period preceding a primary election and the 60-day period preceding a general election. See 118 Cong. Rec. 321 (Rep. Springer); *id.* at 322 (Rep. Staggers); *id.* at 330-331 (Rep. Abbitt).

imposing any rate regulation—whether "lowest unit charge" or "comparable use"—on licensees, except when they sell time for broadcasts by candidates (J.S. App. A32 & n.63). Licensees are free to make their own arrangements when they sell time for other forms of political discussion.

The Texas statute under review would effectively nullify the "carefully circumscribed" federal plan insofar as radio and television stations in Texas are concerned. Under the Texas statute, there is no time limit on the applicability of a "lowest unit charge" rate for political advertising; that rate must always be in effect for political advertisements. Moreover, the statute imposes this extremely low rate whenever a licensee sells time for political discussion, not just to candidates or their campaign committees, but to anyone desiring to discuss a candidate, a political party, a public officer or "any measure submitted to a vote of the people" (J.S. App. F1). The court of appeals correctly held that this statute "conflicts directly" with the federal legislative policy because it "imposes a considerably heavier burden on broadcasters to make low-cost time available to political advertisers than does the federal statute," and also because it "may have the effect of limiting rather than increasing candidate access to the media by discouraging stations from making advertising time available to nonfederal candidates at all" (*id.* at A33-A34 (footnotes omitted)).[15]

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[15]Apart from the fact that the state statute on its face is not limited to advertisements in connection with state and local elections, Texas' claim that it is only seeking to regulate such elections cannot save this statute any more than a similar claim would be sufficient to permit a state to compel broadcast stations to sell advertising time to individuals who are candidates for state offices. See *CBS, Inc.* v. *DNC*, 412 U.S. at 94; *CBS, Inc.* v. *FCC*, 453 U.S. at 378-379, 396.

Appellant claims (J.S. 12) that 2 U.S.C. 453, which explicitly "preempt[s] any provision of State law with respect to election to Federal office," supports, by negative implication, its position that Congress meant to preempt the states only with regard to federal

3. Relying on *National League of Cities* v. *Usery*, 426 U.S. 833 (1976), and *Oregon* v. *Mitchell*, 400 U.S. 112 (1970), appellant contends (J.S. 8-11) that Congress may not regulate the rates charged by broadcasters for political advertising with respect to state and local elections because such regulation would interfere with the state's control over its own electoral processes and thus run afoul of the Tenth Amendment. This contention is insubstantial.

Appellant's complaint here is not about any federal policy directed "to the States as States." *National League of Cities* v. *Usery*, 426 U.S. at 845. The policy instead is one that addresses the rates federally licensed broadcast stations may charge when they decide to sell time to advertisers. Under the federal policy, licensees are generally free to charge whatever they please, except in the limited circumstances described in Section 315(b), 47 U.S.C. 315(b). Appellant's claim, that Congress is without authority to regulate federal licensees operating in interstate commerce with respect to their advertising rates, rests on the incorrect assumption "that the Tenth Amendment limits congressional power to pre-empt or displace state regulation of private activities" in interstate commerce. *Hodel* v. *Virginia Surface Mining & Reclamation Association*, 452 U.S. 264, 289-290 (1981). As this Court stated in *Hodel*,

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elections, and that the states are therefore free to regulate political advertising rates charged by broadcasters for state and local elections. But Section 453 was not designed to deal with Congress's more comprehensive concern about the regulation of broadcaster rates for advertising. As the Conference Report on Section 453 explained:

> It is clear that the Federal law occupies the field with respect to reporting and disclosure of political contributions to and expenditures by Federal candidates and political committees, but does not affect State laws as to the manner of qualifying as a candidate, or the dates and places of elections.

S. Conf. Rep. 93-1237, 93d Cong., 2d Sess. 100-101 (1974).

however, "[a] wealth of precedent attests to congressional authority to displace or pre-empt state laws regulating private activity affecting interstate commerce when these laws conflict with federal law." *Id.* at 290 (citations omitted).[16]

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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General Counsel
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FEBRUARY 1984

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[16]Congress clearly understood the distinction between regulating the practices of federally licensed broadcasters and regulating the electoral process itself. In rejecting a proposal to extend the "lowest unit charge" requirement to nonbroadcast media for state and local elections, the Senate Report stated:

> The Committee feels that Federal jurisdiction over the broadcast media for this purpose rests on its interest in protecting the integrity of Federal elections and its authority to regulate radio and television in the public interest. In the nonbroadcast media, however, the Committee feels this jurisdiction is based only on the former.

S. Rep. 92-96, *supra*, at 29.